

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JIMMY CUELLAR,

Plaintiff,

v.

THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

Case No. 1:23-cv-1075 JLT CDB

ORDER ADOPTING IN PART THE  
FINDINGS AND RECOMMENDATIONS,  
GRANTING DEFENDANT’S MOTION TO  
DISMISS, AND GRANTING PLAINTIFF  
LEAVE TO FILE AN AMENDED  
COMPLAINT

(Docs. 5, 14)

Jimmy Cuellar seeks to hold The Guardian Life Insurance Company of America liable for breach of contract related to life insurance benefits for his mother. (*See* Doc. 1 at 11.) Defendant moved to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 5.)

The assigned magistrate judge found there were “no allegations in the Complaint addressing Defendant or its involvement in the events giving rise to Plaintiff’s claims.” (Doc. 14 at 3.) In addition, the magistrate judge determined that “Plaintiff’s complaint alleges neither the existence of an ERISA plan nor one or more provisions of the plan that entitle him, as the decedent’s son, to receive benefits.” (*Id.* at 6.) Because Plaintiff failed to state a cognizable claim, the magistrate judge recommended the motion to dismiss be granted and the complaint be dismissed with leave to amend. (*Id.*) However, the magistrate judge also recommended the Clerk

of Court be directed to close the case. (*Id.* at 7.)

On September 21, 2023, the Findings and Recommendations were served on the parties and contained a notice that any objections were due within 14 days of the date of service. (Doc. 14 at 7.) In addition, the parties were “advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order.” (*Id.*, citing *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).) No objections were filed and the deadline to do so expired.

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court concludes the findings are supported by the record and by proper analysis. However, the Court notes there are conflicting recommendations: that Plaintiff be granted leave to amend and the action be closed. The Court declines to close this case at this juncture and finds leave to amend is appropriate. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Based upon the foregoing, the Court **ORDERS**:

1. The Findings and Recommendations issued on September 21, 2023 (Doc. 14) are adopted in part.
2. Defendant’s Motion to Dismiss (Doc. 5) is granted.
3. Plaintiff’s complaint is dismissed with leave to amend.
4. Plaintiff shall file an amended complaint within 30 days of the date of service of this order.
5. Plaintiff is advised that failure to file an amended complaint will result in the dismissal of this action for failure to prosecute and failure to comply with the Court’s order.

IT IS SO ORDERED.

Dated: **October 16, 2023**

  
UNITED STATES DISTRICT JUDGE